UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,142	12/19/2005	Ben Van Haegendoren	PF030103	9444

24498   7590   05/27/2008
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EXAMINER
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ART UNIT	PAPER NUMBER
2114	

MAIL DATE	DELIVERY MODE
05/27/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _19 December 2005_.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-18_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1-18_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on _12/19/2005_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☒ All   b)☐ Some * c)☐ None of:
        1.☒ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _12/19/2005_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-18 are pending.

2. This action is in response to the pre-amendments submitted on 12/19/2005.

Specification

3.   The applicant's specification appears to be in proper order. However, it has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of that the applicant may become aware of in the specification.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11, 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Britt (Britt et al) (United States Patent NO. 5940074).

As per claim 1 Britt teaches:

-      ***Network equipment for connection to a local network, said network comprising at least one software server,*** (Britt col 2 lines 23-30 and figures 1, 3, 7) Wherein the WebTV client is shown to be connect to a WebTV server and this connection constitutes the local network and the WebTV server is the software server as claimed;

-      ***said equipment comprising a persistent memory for storing software***(Britt col 2 lines 26-30) Wherein flash memory is the persistent memory as claimed;

- ***wherein it comprises communication means for connection to said network,*** (Britt col 4 lines 16-25 and figure 1) Wherein the ability to connect to the internet using ISDN is the connection means as claimed because within the applicant's specification they disclose the communication means to be "DSL type modem or another stand-alone networking equipment";

- ***means for monitoring the start up of the equipment in order to detect a software failure,*** (Britt col 8 lines 1-13 and figure 6) Wherein the WebTV client is shown to perform the actions necessary to be called the means for monitoring; ***means for generating a software failure signal in response to the detection of a failure by the monitoring means, and for automatically sending a notification of the failure on the network,*** (Britt col 8 lines 14-32 and figure 6) Wherein it is inherent that a signal was generated in response to the error because it did not progress down its normal startup path but instead it proceeded to try and correct the error. Furthermore it is stated that WebTV performs all this automatically on lines 30-32 in addition to this it is inherent that is it done over the network based figure 6 because the local system is connected to a remote server where the local system is receiving the updated data from;

- ***Wherein said notification is broadcast on the network for reception by said at least one software server.*** (Britt col 8 lines 14-32 and figure 1, 3, 6) Wherein it is shown that the update is being downloaded from a server hence it the error must have been sent to the server in order for the server to be able to determine what to retransmit back to the WebTV client.

As per claim 2 Britt further teaches:
- ***wherein the failure signal comprises information specifying at least one of the following: the nature of the failure, an identification of replacement software to be downloaded, an identification of the version of the software currently stored in the persistent memory.*** (Britt col 8 lines 14-32 and figure 1,3,6) Wherein the information being sent is the information on the corrupted

sections of the memory and this identifies what replacement software needs to be downloaded.

As per claim 3 Britt further teaches:

- **wherein the software comprises at least one of the following: a boot program, configuration data, firmware.** (Britt col 8 lines 1-13 and figure 6) Wherein the error checking program is the boot program as claimed since it checks for an error when WebTV is first activated.

As per claim 4 Britt further teaches:

- **wherein, the software comprising firmware, the means for monitoring the start up comprise: means for checking the validity of a current firmware verification pattern and,** (Britt col 8 lines 14-32) Wherein the act of performing a checksum is a form of pattern verification as claimed;

- **means for generating a specific software start up failure signal when this verification pattern is not valid.** (Britt col 8 lines 14-32 and figure 6) Wherein it is inherent that a signal was generated in response to the error because it did not progress down its normal startup path but instead it proceeded to try and correct the error;

As per claim 5 Britt further teaches:

- **wherein the means for monitoring the start up comprise: means for calculating the checksum of the current software, means for comparing this calculated checksum to a previously stored check sum, means for generating the software start up failure signal when this calculated check sum is not identical to the stored one.** (Britt col 8 lines 14-32) Wherein the acts of validation via a checksum are described.

As per claim 6 Britt further teaches:

- *wherein, said memory comprising firmware, the means for monitoring the start up comprise: means for checking the presence of the firmware in the memory means,* (Britt Col 2 lines 26-30 , col 7 lines 20-56, col 8 lines 1-13,figures 1, 4, and 6) Wherein the flash memory is the firmware as claimed because they perform the identical function in the same way although they are called different things;

- *means for rebooting the stand alone equipment when no firmware is stored in the memory,* (Britt col 8 lines 14-32 and figure 6) Wherein the resetting process is performed after the download update has been completed after a check for an inconsistent state is preformed and no firmware i.e. missing memory is a type of an inconsistent state;

- *means for generating a software start up failure signal when no firmware is stored in the memory means.* (Britt col 8 lines 14-32 and figure 6) Wherein it is inherent that a signal was generated in response to the error because it did not progress down its normal startup path but instead it proceeded to try and correct the error.

As per claim 7 Britt further teaches:

- *wherein the means for monitoring the start up comprise: means for checking the downloading of replacement software in the memory,* (Britt col 8 lines 1-32 and figure 6);

- *means for rebooting the equipment* (Britt col 8 lines 14-32 and figure 6) Wherein the resetting process is performed after the download update has been completed;

  and means for generating a software start up failure signal when a problem is detected during this downloading. (Britt col 8 lines 14-32 and figure 6) Wherein it is inherent that a signal was generated in response to the error because it did not progress down its normal startup path but instead it proceeded to try and correct the error.

As per claim 8 Britt further teaches:

- *wherein the software comprises firmware, and the equipment comprises:*
  means for writing replacement firmware verification pattern corresponding
  to the replacement firmware downloaded in the memory, when a
  replacement firmware is properly recorded in this memory. (Britt col 2 lines
  23-30 , col 8 lines 14-32 and figure 1,3,6,7) Wherein it is shown that based on
  the Checksum the program will download replacement information to the flash,
  which is being considered the firmware as stated above, and will write this
  information to the memory of the unit.

As per claim 9 Britt further teaches:

- *wherein the means for monitoring the start up comprise: means for*
  checking the process of loading of a software, (Britt col 8 lines 14-32 and
  figure 6) Wherein a checksum check for corrupted information also is inherently a
  check to make sure that the software currently on the WebTV system has the
  ability to load because a corrupted bits of data will prevent the software from
  loading and functioning properly;
- *means for rebooting the stand alone equipment*(Britt col 8 lines 14-32 and
  figure 6) Wherein the resetting process is performed after the download update
  has been completed;
  and means for generating a software start up failure signal when a problem
  appears during this loading. (Britt col 8 lines 14-32 and figure 6) Wherein it is
  inherent that a signal was generated in response to the error because it did not
  progress down its normal startup path but instead it proceeded to try and correct
  the error.

As per claim 11 Britt further teaches:

- *wherein it further comprises user actionable means connected to the*
  monitoring means for enabling a user to manually request the download of
  replacement software. (Britt col 8 lines 45-50 figure 7) Wherein it is stated that

a user may manually request for an upgrade to occur.

As per claim 13 Britt further teaches:

- *wherein the means for generating a software start up failure signal comprise: means for checking the setting of a failure flag,* (Britt col 8 lines 14-32 and figure 6) Wherein figure 6 shows that it checks for the setting of a failure flag and this flag is simply the indicator that the checksum sets when it checks for a validity i.e. either valid or invalid;

- *and means for generating the software failure signal and for transmitting it on the network in response to the detection of a set failure flag.* (Britt col 8 lines 14-32 and figure 6) Wherein it is inherent that a signal was generated in response to the error because it did not progress down its normal startup path but instead it proceeded to try and correct the error.

As per claim 14 Britt further teaches:

- *wherein the indication of the nature of the failure comprises a series of status flags.* (Britt col 8 lines 14-18) Wherein the checksum checks for multiple types of failures as shown by the examples of "program instructions and data".

As per claim 15 Britt further teaches:

- *wherein said notification further comprises an identification of the version of the software currently stored in the persistent memory.* (Britt col 9 lines 19-22) Wherein WebTv transmits "which version of the software" it is using.

Claim 16 is rejected under the same reasoning as were used to reject claim 1 of the applicant's application, because the network equipment itself and the way it is being used suggests the method of using the equipment.

As per claim 17 Britt further teaches:

- ***wherein the software failure signal comprises a request to the at least one software server for the download of replacement software in the memory.*** (Britt col 8 lines 14-32 and figure 6) Wherein in order to replace the failed section of software there must have been a request made else the failed section of software would have never been replaced.

As per claim 18 Britt further teaches:

- ***wherein the software failure signal comprises an identification of the failure for analysis by the at least one server.*** (Britt col 8 lines 14-32 and figure 6) Wherein in the checksum identifies the failure as claimed.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Britt et al (Britt) (United States Patent NO. 5940074) in view of Marsh et al (Marsh) (United States Pre-Grant Publication NO. 20020095619).

As per claim 10 Britt does not specifically teach, wherein the means for monitoring the software start up comprises: a timer to determine a start up time limit, means for launching the software start up, said software being adapted to a start up end indication to the monitoring means after completion of the start up; means for generating a software start up failure signal, if the software start up is not completed before the end of the time limit.

However the analogous art of Marsh teaches the above limitation. (Marsh et al abstract, figures 2-4, and paragraph [0043])

Hence it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaches of Britt into the teaching of Marsh in order to make a timer, which checks to make sure a program is functioning properly, because one of ordinary skill would have recognized the need for a high reliability system (Marsh paragraph [0001] lines 23-26).

As per claim 12 Britt does not specifically teach, wherein it further comprises an alarm connected to the monitoring means for notifying a start up failure to the user.

However the analogous art of Marsh teaches the above limitation. (Marsh et al paragraph [0044] as well as figures 3 and 4) Wherein it is shown that a checksum error may be issues to the user.

Hence it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaches of Britt into the teaching of Marsh in order to display error messages to the end user, because one of ordinary skill would have recognized the benefit of keeping the user informed of the actions of the program (Marsh paragraph [0045]).

Conclusion

6.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford A. Rodgers-Farmer whose telephone number

is (571) 270-3888. The examiner can normally be reached on Monday to Thursday

9:30am to 7:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Baderman Scott can be reached on (571)272-3644. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bradford A Rodgers-Farmer/
Examiner, Art Unit 2114
Thursday, May 15, 2008

/Joshua A Lohn/
Primary Examiner, Art Unit 2114